AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

COMMENTS TO THE MULTISTATE TAX COMMISSION

REGARDING

THE DRAFT MODEL UNIFORM STATUTE ON REPORTABLE TRANSACTIONS AND STATE FILING POSITIONS

Revised Proposal Dated May 11, 2006

Submitted to the Multistate Tax Commission
August 15, 2006

AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS

Comments on the Revised Proposed Model Statute Regarding Reportable Transactions and State Filing Positions

EXECUTIVE SUMMARY

The Multistate Tax Commission (MTC) in May 2006 published proposed amendments to a uniformity project dealing with reportable transactions. The amended draft, titled the *Draft Model Uniform Statute on Reportable Transactions and State Filing Positions* (revised proposal)[1] would affect only businesses required to file in more than one state. The revision was in response to public comments received by the MTC. A major change in the revised proposal relates to the manner of reporting to one state of various items of tax information reported to other states via a "51-state spreadsheet." It is to this revision that we address our comments.

The limited focus of this comment letter on the above matter does not imply agreement with other sections of the revised proposal. In that regard, this comment letter should be read in conjunction with our previously submitted comment letter dated November 28, 2005 as those comments, including our recommendation to eliminate all requirements to report inconsistent filing positions, still apply to the revised proposal to the extent our comments were not implemented.

The American Institute of Certified Public Accountants (AICPA) believes that:

- The revised proposal for the creation and submission of a 51-state spreadsheet imposes a significant, unnecessary and costly burden on business taxpayers.
- The revised proposal undermines the income tax self-assessment system by requiring excessive information not relevant to the computation of a specific state's income tax return.
- Significant information sharing resources already available to state tax administrators make the submission of a 51-state spreadsheet unnecessary.
- It is unrealistic to believe that the tax administrator in a single state, without significant assistance and explanation from the taxpayer, will have the required knowledge base to ascertain whether information reflected on a 51-state spreadsheet represents legitimate differences in state law/interpretations or otherwise.
- The proposed penalties for failure to file or maintain the requested information are excessive because they bear no relationship to whether additional taxes are assessed.
- The proposed penalty for failure to file the requested information is unfair because the information is required to be submitted before a significant amount of such information has become readily available.

[1] The revised proposal is available on the MTC website at http://www.mtc.gov/UNIFORM/MTC%20Draft%20RTSFPstatute05-11-06.pdf.

- The lack of judicial review over the director's discretion in penalty waivers is unwarranted because a failure to file or maintain the requested information has no specific association with a transaction or arrangement having a potential for tax avoidance or evasion.
- The proposed 10-year document retention requirement appears unnecessary.
- A clear and convincing standard to overcome an assessment on an inconsistent filing position is unwarranted and could lead to tax administrators abusing their discretionary authority.
- The revised proposal does not appear to have sufficiently considered whether a state's sharing of the actual 51-state spreadsheet complies with existing information sharing agreements and limitations and adequately safeguards the confidentiality of taxpayer information.

Overall, the AICPA believes that the revised proposal's mandate that multistate taxpayers disclose, with each state return, information with respect to the computation of taxes in other states should be dropped, and such information, to the extent it is relevant to the computation of an accurate tax liability, may be available upon formal request by a tax administrator in the context of a return under audit.

BACKGROUND

The Multistate Tax Commission (MTC) Executive Committee on May 11, 2006, introduced the revised proposed. The revised proposal generally would require disclosure of reportable and listed transactions, establish disclosure and list maintenance requirements for material advisors, and impose substantial penalties for the failure to comply with any provision of the model uniform statute. In addition, the revised proposal would require taxpayers to disclose via a "51-state spreadsheet" the tax filing positions in all states in which returns are filed.

The revised proposal is an amended version of an earlier proposed model uniform statute titled *Model Uniform Statute on Reportable Transactions & Inconsistent Filing Positions* ("original proposal"). The original proposal generally would have required disclosure of reportable and listed transactions, established disclosure and list maintenance requirements for material advisors, and imposed substantial penalties for the failure to comply with any provision of the model uniform statute. In addition, in lieu of the "state filing positions" requirement of the revised proposal, the original proposal would have required taxpayers to disclose, on a state-by-state basis, "inconsistent" filing positions in all states in which returns are filed.

Revisions to the original proposal were based on input from interested parties during a September 2005 public hearing and written comments submitted through November 2005. A Final Hearing Officer's Report[2], dated May 2006, summarizes that input. On page 8 of that

[2] The Hearing Officer's Report is available on the MTC website at http://www.mtc.gov/UNIFORM/RT%20%20IFP%20HO%20Report-%20Final.pdf.

report, the Hearing Officer stated the following with respect to her recommended changes to the original proposal:

> Most of the recommendations are simple changes that would improve the existing provisions. Some are more on the order of technical clean-up. However, one recommendation would be fairly comprehensive and is in response to extensive public comment expressing concern regarding the requirement that a taxpayer disclose inconsistent filing positions taken in different states. The recommendation is to eliminate this requirement altogether, and substitute a *much less burdensome requirement* that a taxpayer simply report what is filed in each state for certain key items - a "51-state spreadsheet." The state auditors, rather than taxpayers, will then be responsible for identifying any inconsistencies and for determining their significance, or lack thereof. (Emphasis added.)

During the May 11 meeting, the Executive Committee approved the revised proposal for a By-Law 7 Survey. However, the Executive Committee modified the standard survey process to allow itself additional time to work on the most "comprehensive" amendment; *i.e.*, replacing the inconsistent filing position reporting requirement with a state filing position reporting requirement. The change to the survey process was prompted by comments made at the meeting by business and taxpayer representatives, including Doug Lindholm, Executive Director, Council on State Taxation; Victor Ledesma, Incoming Chair, Tax Executive Institute, State and Local Tax Committee; and Janet Wilson, Outgoing Chair, Tax Executive Institute, State and Local Tax Committee.

In general, the comments raised concerns that the Executive Committee had failed to: (1) fully identify their real concerns regarding tax reporting; (2) examine the tools currently at their disposal; (3) fully consider the complexities of a "51-state spreadsheet" for both tax administrators and taxpayers; and (4) involve the business and taxpayer community to develop a workable solution.

Based on the concerns raised, Joan Wagnon, Chair, Executive Committee, asked a small group of state representatives[3] to form a "task force" to work with business and taxpayer representatives to address the concerns raised during the meeting. In addition, Ms. Wagnon stated that any communications to members regarding the survey would indicate that the "state filing" section of the revised proposal could be subject to revision.

As part of the task force effort, the MTC in early June circulated a draft "51-state spreadsheet" and held a June 8 conference call to discuss the draft. To date, the MTC has not scheduled a follow-up call with business and taxpayer representatives to discuss concerns raised specific to the spreadsheet.

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[3] The following state representatives during the meeting expressed a desire to work on the task force: R. Bruce Johnson, Commissioner, Utah State Tax Commission; Andrea Chang, California Franchise Tax Board, Multistate Tax Bureau; Dan Bucks, Director, Montana Department of Revenue; Shirley Sicilian, General Counsel, Multistate Tax Commission.

The AICPA would like to address its comments specifically to the requirement in the revised proposal to file a 51-state spreadsheet characterized by the Hearing Officer as a "less burdensome requirement" than the inconsistent filing position requirement of the original proposal. We are not commenting on the revised proposal in total or on the specific content of the draft spreadsheet. However, please note that our lack of additional commentary with regard to amendments made to the balance of the revised proposal does not signal our agreement with those amendments. Rather, to the extent the revised proposal has not been amended in response to the concerns raised in our earlier comment paper, our concerns remain. Similarly, our lack of commentary on the draft spreadsheet does not imply that the AICPA finds the draft spreadsheet an acceptable method to address the concerns of state tax administrators with regard to accurate income tax reporting. Should the MTC fail to eliminate the spreadsheet requirement, we would be happy to work with the MTC to ensure that the spreadsheet meets the needs of all parties as best as possible.

AMENDMENTS TO INCONSISTENT FILING POSITION REQUIREMENT

As noted above, the report recommends that the requirement to disclose inconsistent filing positions be deleted and replaced with a "51-state spreadsheet." The report states that the spreadsheet would meet most, although not all, of the concerns raised by state tax administrators in written testimony submitted with regard to the original proposal. In addition, the report states that the spreadsheet would allow a state to easily compare a taxpayer's filing position in their state with the filing position taken in a sister state known to have comparable laws, and could be shared among states to ensure that taxpayers have correctly disclosed their filing positions. It appears that the spreadsheet requirement was originally suggested by the MTC Uniformity Committee, which was involved in drafting the original proposal.[4] The report offers an alternative to the spreadsheet; *i.e.*, require taxpayers simply to maintain "desired information" and provide it within 30 days of a written request.

Specifically, the revised proposal would require a taxpayer that conducts business activity in a state and one or more other states, or that is a member of a combined reporting group that conducts business activity in a state and one or more other states, to disclose, in the form and manner prescribed by the Director (tax administrator), the filing positions taken in all other income tax states.[5]

Information to be disclosed with respect to each state would include:[6]

1. Whether the taxpayer filed in that state.
2. The business income of the taxpayer, or of the taxpayer's combined reporting group, reported to that state.

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[4] A similar spreadsheet idea was suggested by the Worldwide Unitary Taxation Working Group in 1984.

[5] Section III. 1. A.

[6] Section III. 1. C.

3. The total nonbusiness income of the taxpayer, or the total nonbusiness income of each member of the taxpayer's combined reporting group.
4. The total nonbusiness income of the taxpayer, or the total nonbusiness income of each member of the taxpayer's combined reporting group, allocable to that state.
5. For each of the apportionment factors used to determine the apportionment percentage, the dollar amount of the numerator and the denominator of the ratio used in that factor.
6. The apportionment percentage used to apportion income subject to taxation in that state.
7. The dollar amount of business income apportioned to that state.
8. For those states that use combined reporting to apportion income, for each combined reporting group of which the taxpayer is a member, a list of all corporations whose business income was included in business income of the combined reporting group.
9. Such other information relating to the determination of business income, nonbusiness income, or the apportionment or allocation of that income as the Director, by regulation, shall require.

The revised proposal would mandate that information required to be disclosed must be filed with, and attached to, any original and amended income tax returns for any tax year to which the requirements apply.[7]

The revised proposal would impose a series of record keeping requirements which would apply for a period of not less than 10 years from the original or extended return due date.[8] The record keeping requirements would include information associated with any return due on or after the date two years before the enactment.[9]

The revised proposal would impose a series of penalties for the failure to fully disclose, retain or provide any information with respect to filing positions as required under the proposed statute or any regulations adopted thereunder, which would apply in addition to any other applicable penalties.[10] The ability to waive any penalty would be solely at the discretion of the director; *i.e.,* taxpayers would not be able to appeal the decision of a director with respect to the assessment of penalties.[11] As proposed, penalties would be imposed for the:

1. Failure to file a disclosure of the required filing positions. The amount of this penalty would be the greater of $10,000 or 0.25 percent of the amount of net income properly apportioned and allocated to the state.

2. Failure to provide information required to be retained under the record keeping requirements within 30 days of a request by the director, or within such additional time as

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7 Section III. 1. D.

8 Section III. 2. A.

9 Section III .2. B.

10 Section III. 3. A.

11 Section III. 3. C.

the director may allow by extension. The amount of this penalty would be a fixed dollar amount set by the director, with an additional fixed dollar amount for each additional 30 days until the information is provided.

3. Failure to retain filing position information required to be disclosed. The amount of this penalty would be a fixed dollar penalty set by the director in lieu of the additional 30 day penalties, but only after submitting an affidavit that such information does not exist.

If a taxpayer fails to disclose the required filing position information, the revised proposal would extend the statute of limitations period with respect to the assessment of tax, interest, and penalty to not later than twice the standard statute of limitations period.[12] The period for refund would not be similarly extended.

The revised proposal would presume that the taxpayer is liable for any underpayment of tax properly assessed, where such underpayment resulted from a filing position that is an inconsistent filing position, with respect to a position taken in another state with substantially similar law.[13] The taxpayer may overcome the presumption only by clear and convincing evidence to the contrary.

An "inconsistent filing position" is defined as the reporting or reflecting of information on any return filed for a state's income tax purposes in a manner inconsistent with the manner in which the same or similar information was reported or reflected on any return filed by the same taxpayer, or by a member of a unitary group of which the same taxpayer is a member, in another state with respect to a tax on or measured by net income for the same tax year.[14]

CONCERNS WITH REVISED PROPOSAL

The AICPA has a number of significant concerns with the revised proposal as set forth below.

1. Undermines Basic Goal of Income Tax Self-Assessment

Taxpayers are obligated to comply with all appropriate state tax laws, administrative guidance, and court rulings in the states in which they do business, and to file returns that reflect no more and no less than the tax actually due. Tax administrators play a key oversight role with regard to the computation of an accurate liability, and are authorized to audit taxpayer returns to ensure that a taxpayer has complied with its obligation to correctly self-assess and report taxes owed the state. In doing so, tax administrators look to the return as filed, and may request additional information, where needed, provided that the requested information substantially relates to the accurate computation of tax reported on return subject to audit.

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[12] Section III. 4.

[13] Section III. 5.

[14] Section II. 3.

The revised proposal would authorize a tax administrator to require taxpayers to proactively report information unrelated to the computation of a specific state's tax return. Without proper context, this extraneous information would not aid in the audit of a return. As elaborated in more detail later, given the lack of uniformity in state tax laws, the reported information more likely would lead to confusion and "muddy the waters" when a tax administrator tries to understand why a taxpayer applied a different reporting method in computing taxes owed in another state.

2. Imposes Excessive Compliance Burden on and Increases Compliance Costs for Business Taxpayers

The goal of a taxing policy should be to treat all taxpayers in a fair and equitable manner. However, the revised proposal would impose a significant additional reporting obligation on a small but heavily-taxed group, business taxpayers,[15] that are already subject to numerous federal, international and state and local tax and regulatory reporting obligations.[16] Gathering, processing, and preparing the additional information required under the revised proposal would significantly add to existing reporting obligations and impose undue burden on all business taxpayers, both large and small. As significant a burden as the revised proposal would impose on taxpayers, this burden will be greatly compounded by the lack of uniformity that inevitably will result among the reporting methods chosen by states to collect the desired information.

Business taxpayers already incur significant costs to comply with their federal, international, and state and local reporting obligations. Those costs include the cost of complying with taxes borne (*e.g.,* net income) and collected (*e.g.,* sales) by businesses. While some of the costs of compliance may be considered part of the overall economic cost of a profit-seeking endeavour, a number of the costs, such as those associated with the collection and remittance of sales taxes, are more in the nature of an "unfunded mandate" imposed by tax administrators. The cost of tax compliance has significantly increased in recent years as taxing jurisdictions enact complex and often unclear reporting requirements or adopt new tax structures that require taxpayers to spend a significant number of hours to ensure compliance with their filing obligations. The increase in compliance costs associated with the development of a spreadsheet would burden business taxpayers, and provide little or no value in achieving a tax administrator's goal of fair and full reporting.

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[15] *See* Council on State Taxation, *Total State and Local Business Taxes: Nationally 1980-2005, by State 2002-2005, and by Industry 2005* (…44 percent of all state and local taxes are now paid by business…businesses paid 48 percent of the entire increase in state and local taxes from FY 2002 to FY 2005…).

[16] For example, a business' tax reporting obligations may include net income taxes; franchise/capital stock/net worth taxes; alternative minimum taxes; business and corporate license taxes; business and occupation, business privilege, commercial activity and other gross receipts taxes; excise taxes; insurance procurement or premiums taxes; real and tangible personal property taxes; sales and use taxes; motor, diesel fuel and petroleum taxes; severance taxes; telecommunications and other utility taxes, unemployment insurance, disability and other payroll taxes/withholdings; and a range of miscellaneous tax returns (such as amusement and gaming, documentary and stock transfer, environmental, motor vehicle license, occupancy, and real estate transfer taxes). These tax filings are in addition to Secretary of State and other regulatory filing obligations.

3. States Already Have Sufficient Tools at Their Disposal to Gather Desired Information

The report proffers that the spreadsheet could be "shared among states to ensure that taxpayers have correctly disclosed their filing positions." That said, the report implies that, absent the spreadsheet, tax administrators are at a loss to work with one another in determining whether taxpayers have accurately reported their tax liability. However, such a suggestion belies the reality that tax administrators have a wealth of tools at their disposal.

Most states have entered into information sharing agreements (Memorandums of Understanding or MOUs) with the Internal Revenue Service that allow a two-way sharing of information on abusive tax avoidance transactions and those taxpayers who participate in them.[17] In addition, virtually all states have entered into a complementary multistate disclosure agreement (Memorandum of Agreement or MOA) brokered by the Federation of Tax Administrators (FTA), to share information regarding abusive tax avoidance transactions.[18] The MOA is in addition to long-standing information sharing agreements, facilitated by FTA under the Uniform Exchange of Information Agreement, that allow state tax agencies to routinely share taxpayer data. All of these agreements are intended to comply with state statutory requirements regarding the manner in which confidential taxpayer data must be shared, stored, and disposed.

While the MOU and MOA focus specifically on situations where taxpayers use abusive tax avoidance transactions, the MOA and the Uniform Exchange of Information Agreement provide tax administrators with the tools they need to communicate with one another and address any concerns regarding inappropriate filing methodologies. Most importantly, they provide a framework for sharing information in a way that will not violate existing statutory guidelines. Given the existing information sharing agreements, it appears that tax administrators already have sufficient tools at their disposal to ensure full and fair compliance, and that the revised proposal would result in a reporting requirement that is unnecessary and disproportionate to the potential benefits.

4. Requires Tax Administrators to Become Multistate Tax Specialists

The report states that the proposal would allow tax administrators to determine whether a taxpayer has correctly disclosed its filing positions, apparently by looking to how the taxpayer reported certain transactions (*e.g.*, business/nonbusiness income, apportionment factors) in a "sister state known to have comparable laws." The report and the revised proposal do not provide any guidance on the terms "sister state" and "comparable laws."

It is well known that there is a lack of uniformity in state laws in general, as well as a lack of uniformity in the interpretation of state tax laws, even where different states adopt the same or

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[17] *See* IR-2003-111, Sept. 16, 2003, *IRS and States Announce Partnership to Target Abusive Tax Avoidance Transactions* (Under agreements with individual states, the IRS Small Business/Self-Employed (SB/SE) Division will share information on abusive tax avoidance transactions and those taxpayers who participate in them).

[18] *See* Federation of Tax Administrators, News Release, March 4, 2004, Updated July 15, 2004, Updated April 15, 2006. As of April 15, 2006, 47 states, the District of Columbia, and New York City are signatories to the agreement.

substantially similar language. Accordingly, the terms "sister state" and "comparable laws" in the context of state taxes are vague and open to differing interpretations, which will lead to confusion and additional lack of conformity. It is almost a certainty that the spreadsheet will result in data that looks widely inconsistent even if prepared in full compliance with the laws of every state. The inconsistencies may be the result of different laws, differences in nexus, differences in combined groups, and other legitimate and required variances among states.

For this reason, the suggestion in the report that "state auditors, rather than taxpayers, will be responsible for identifying any inconsistencies and for determining their significance, or lack thereof" remains troubling. It is unclear how a state auditor would determine what items qualify as an "inconsistency" or the significance of such an inconsistency by looking merely at numbers listed on a spreadsheet. The comment fails to acknowledge the complexity and lack of standardization in state income tax returns and the required attachments and schedules. In addition, it suggests that each and every state tax auditor is fully knowledgeable about the nuances of tax laws in a number of states, and should be allowed to request additional information and explanation about the spreadsheet contents as desired. Notably, the report fails to acknowledge how inconsistencies, be they differences in state tax laws or differences in the interpretation of a single state's law, would be resolved.

5. Imposes Excessive and Unfair Penalties

The penalty imposed on the failure to file a spreadsheet is troubling in that it makes no reference to underpayment, and appears to be imposed in any instance in which a taxpayer fails to disclose information regarding a filing position, regardless of whether the filing position taken is correct or results in an underpayment of tax. This penalty differs significantly from the vast majority of taxpayer penalties, which are computed based on a percentage of actual tax underpayment. Rather, the penalty mirrors those imposed for the use of tax shelters and abusive tax avoidance transactions. However, in this case, the penalty is not related to a failure to disclose a transaction specifically identified as potentially abusive, but would involve a failure to support what easily could be perceived as a "fishing expedition" by the tax administrator.

The penalty imposed for the failure to file a spreadsheet as of the return due date is patently unfair in that it fails to adequately acknowledge the challenges taxpayers face in preparing and reviewing federal, international, and state and local returns (*i.e.*, there is a reason why taxpayers are allowed to extend their return filing due date). Asking taxpayers to report additional information often not readily available would put a huge roadblock in the way of taxpayers as they work to gather the information already needed to comply with their normal reporting obligations in a range of states. This requirement also fails to acknowledge that state income tax returns are due on a number of different dates; accordingly, information for states with later return due dates may not be complete at the due date for those states requiring earlier filings. Given that the revised proposal is intended to be adopted in a number of states, the failure and/or inability of a taxpayer to comply with the spreadsheet requirement potentially could result in multiple and tiered penalties in numerous states - an onerous and dizzying burden by any measure.

The provision indicating that a determination by the director regarding penalty waiver may not be reviewed in any judicial proceeding also is a significant concern. As noted above, the requirement to provide a 51-state spreadsheet has no specific nexus to a transaction or arrangement having a potential for tax avoidance or evasion. Accordingly, there is no compelling reason that the terms of the penalty waiver provision relative to providing a 51-state spreadsheet should parallel the waiver provisions of other penalties (such as the failure to disclose a reportable transaction) found in the revised proposal (and the federal counterparts for those penalties). Absent the ability to challenge such penalties in an impartial forum, taxpayers could be repeatedly subject to excessive liability even when fully complying with the law and timely remitting the proper amount of tax.

6. Imposes Excessive Document Retention Requirement

The revised proposal would require taxpayers to retain records for not less than 10 years from the original or extended return due date, regardless of whether the return at issue is subject to audit. In general, taxpayers must retain tax preparation records for as long as needed to support the returns filed.[19] Generally, that period is tied to the statute of limitations for the return at issue. More often than not, the statute of limitations is three years, unless a longer statute of limitations applies (*e.g.*, a longer statute of limitations for substantial understatement of tax, net operating loss carryforwards or carrybacks, certain listed and reportable transactions, etc.). Because the desired information is tied to a standard income tax return, the 10-year record retention requirement is excessive and unnecessary.

7. Clear and Convincing Evidence Standard Excessive

The revised proposal would impose a "clear and convincing" evidence standard to rebut the presumption that an assessment is accurate where such assessment is made with respect to an inconsistent filing position. This standard far exceeds the standard generally applied at the state level.[20] Accordingly, the "clear and convincing" evidence standard is excessive and has the potential for tax administrators to abuse their discretionary authority. Moreover, the standard violates a taxpayer's right to fair treatment when state laws adopt a more moderate standard of proof for tax assessments.

8. Could Undermine Existing Limitations on Information Sharing and Jeopardize Taxpayer Confidentiality

The sharing of information collected under the revised proposal has the potential to infringe upon existing taxpayer information sharing restrictions and violate taxpayer confidentiality. The Uniform Exchange of Information Agreement, mentioned above, is broadly written to allow

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[19] *E.g., see* I.R.C. Sec. 6001.

[20] *E.g., see In the Matter of the Appeal of Sierra Productions Service, Inc., et al.,* California State Board of Equalization, 90-SBE-010, September 12, 1990 (taxpayer can overcome the presumption of unitary through a "specific concrete evidence" standard and if the proven, the burden of going forward shifts to respondent, who will then be obliged to offer concrete evidence sufficient to support a finding of unity. If respondent satisfies this burden, then the presumption disappears, and the taxpayer will, as in the usual tax case, bear the ultimate burden of persuading, by a preponderance of the evidence, that the taxpayer's position is correct.)

states to exchange of information necessary for tax administration purposes. Specifically, the agreement states that it "shall apply to the exchange of any information in the possession of one party which could reasonably be considered useful to other parties for the facilitation of tax administration."[21] However, the agreement also limits the sharing of information by stating that "no party to this agreement shall disclose any information obtained pursuant to the agreement to any other state without explicit consent of the party furnishing the information."[22] There is no indication that, in putting forth the revised proposal, consideration has been given to existing statutory limitations on the sharing of information or whether the sharing of a 51-state spreadsheet could undermine those limitations, seemingly turning a deaf ear to the ongoing and very public debate regarding conflicting interpretations of taxpayer confidentiality rules.[23]

Because a 51-state spreadsheet (a) allows a state to collect information with respect to a taxpayer's operations in multiple states, and (b) provides information that is not relevant to determining tax owed to the collecting state, the sharing of this information arguably exceeds the limitations imposed by the Uniform Exchange of Information Agreement. First, a 51-state spreadsheet would allow a single state to share taxpayer information relative to other states without the express consent of those other states. This at least violates the spirit, if not the letter, of the Uniform Exchange of Information Agreement. Second, it is highly questionable whether this information "could *reasonably* be considered useful" in the facilitation of tax administration for *any* state. As has been articulated previously, the wide-scale inconsistencies that are likely to be disclosed on a 51-state spreadsheet as a result of nothing more than inconsistent state laws and interpretations seemingly will have minimal, if any, utility other than to increase confusion across the board. Finally, sharing such information not only may violate provisions of a specific state's Taxpayer Bill of Rights, but also could significantly increase the risk of sensitive taxpayer information ending up in the public domain.

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[21] Uniform Exchange of Information Agreement, Artl. IV, Sec. 1.

[22] Uniform Exchange of Information Agreement, Artl. V, Sec. 3.

[23] *See, e.g.*, Kimberly M. Reeder, *Disclosure of Tax Information - Balancing Privacy and the Right to Know*, 39 State Tax Notes, 731 (March 6, 2006); *Jim Elliott, Petitioner v Montana Department of Revenue, Respondent; Montana Taxpayer's Association, Intervenor*, Montana 1st Judicial Dist. Ct., No. CDV-2004-77 (April 2005) (Montana Senator Jim Elliott filed a lawsuit against the Montana Department of Revenue that seeks a ruling that the tax returns and tax return related information filed by certain corporations doing business in Montana are public documents. The District Court ruled in favor of the Department and the Montana Taxpayers Association in April 2005 and Senator Elliott appealed to the Montana Supreme Court. The supreme court heard the matter in May 2006. The lawsuit, if successful, would destroy the required confidentiality of income tax returns and tax return related information for any taxpayer or reporting entity that is not a human entity).